No. 00-777

In The Supreme Court of the United States

JANET RENO, Attorney General of the United States; ROBERT S. COLEMAN, JR., District Director of the Immigration and Naturalization Service, Seattle; and the UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, *Petitioners*

v.

DAREN LIM, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE BY RESPONDENT TO PETITION FOR A WRIT OF *CERTIORARI*

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10 pp

QUESTION PRESENTED FOR REVIEW

Whether, under 8 U.S.C. § 1231(a)(6), the Attorney General has the statutory authority to indefinitely detain a long-time resident alien of the United States beyond the 90-day removal period even if the deportation order cannot be effectuated in the reasonably foreseeable future.

Whether, if the Attorney General has the statutory authority to detain a long-time resident alien of the United States without time limitation under 8 U.S.C. § 1231(a)(6), that provision violates Daren Lim's Fifth Amendment Due Process rights because his deportation cannot be effectuated in the reasonably foreseeable future and, even if his deportation was foreseeable, he is not a danger to the community or a flight risk.

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IN THE SUPREME COURT OF THE UNITED STATES

No. 00-777

JANET RENO, et al., *Petitioners*
v.
DAREN LIM, *Respondent*

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RESPONSE BY RESPONDENT TO PETITION FOR A WRIT OF *CERTIORARI*

OPINIONS BELOW

The petition for *certiorari* correctly cites to the unreported district court and Court of Appeals opinions below. App. A & B to Pet. for Cert. 1a-16a. The district court order denying the government's motion to stay Mr. Lim's release pending their appeal to the Ninth Circuit is not reported. App. A, *infra*, 1a. The court of appeals order denying the government's emergency motion for a stay of Mr. Lim's release is not reported. App. B, *infra*, 2a.

STATUTORY, REGULATORY AND CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The petition for *certiorari* correctly cites the statutory and regulatory provisions involved in the case, 8 U.S.C. § 1231(a)(6), 8 C.F.R. §241.4, and § 1231(a)(3). Pet. for Cert. 2-4. The additional statutory provision governing Mr. Lim's release is 8 U.S.C. § 1253(b) which provides:

> An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 1231(a)(3) of this title or knowingly give false information in response to an inquiry under such section shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

The constitutional provision involved is the Fifth Amendment Due Process Clause which provides, in relevant part: "No person shall . . . be deprived of life, liberty or property, without due process of law[.]"

STATEMENT

The lower court opinions correctly set forth the facts of the case and the procedural background. Pet. for Cert. 1a-16a.

By writ of habeas corpus, Mr. Lim challenged on statutory and federal constitutional grounds his ongoing detention by the INS because his deportation order cannot be effectuated in the reasonably foreseeable future, if ever. Both of the lower courts ruled in Mr. Lim's favor. App. A to Pet. for Cert. 1a-2a; App. B. to Pet. for Cert. 3a-4a. The Court of Appeals affirmed the grant of Mr. Lim's writ of habeas corpus based on the circuit's decision in *Ma v. Reno,* 208 F.3d 815 (9th Cir.), *pet. reh'g denied* (June 2, 2000), *cert. granted,* 121 S.Ct. 297, 69 USLW 3086 (U.S. Oct. 10, 2000) (No. 00-38). App. A to Pet. for Cert. 1a-2a. In light of the grant of *certiorari* in *Ma*, Mr. Lim waives his right to file a Brief in Opposition. Mr. Lim does not thereby waive any objections to the government's recitation of the facts which are either inaccurately stated in, or omitted from, the petition for *certiorari.*

ARGUMENT

The questions presented by this case are whether the Attorney General has the statutory authority to detain a long-time resident alien of the United States whose deportation order cannot be effectuated in the reasonably foreseeable future, if ever, and if so, whether that detention runs afoul of Mr. Lim's substantive due process rights under the Fifth Amendment of the United States Constitution. These same issues are presented in *Ma v. Reno,* 208 F.3d 815, and *Zadvydas*

v. Underdown, 185 F.3d 279 (5th Cir. 1999), *cert. granted*, 121 S.Ct. 297, 69 USLW 324, 69 USLW 3257 (U.S. Oct. 10, 2000) (No. 99-7791), in which the Court granted *certiorari* review on October 10, 2000.

Accordingly, Mr. Lim does not waive any objections to the government's recitation of the proper legal analysis in Mr. Lim's case. He nevertheless agrees with the government that consideration of the government's petition in this case should be held pending the Court's decision in *Ma* and *Zadvydas*.

CONCLUSION

The government's petition for *certiorari* should be held pending this Court's decision in *Reno v. Ma,* No. 00-38, and *Zadvydas v. Underdown,* No. 99-7791, and then disposed of as appropriate in light of the decisions in those cases.

Respectfully submitted,

Jennifer E. Wellman
Assistant Federal Public Defender
Counsel of Record

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Federal Public Defender for the
Western District of Washington

Counsel for Respondent, Daren Lim

November 28, 2000

APPENDIX A

FILED 12-15-99
LODGED ENTERED
RECEIVED

DEC 14 1999

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAREN LIM,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent. -

NO. C99-528Z

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Respondent's motion for reconsideration and emergency stay, docket no. 29 is DENIED, for the reasons stated in the Pauch order in C99-147R dated December 2, 1999.

The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Filed and entered this 13th day of December, 1999.

BRUCE RIFKIN, Clerk

By Casey Condon
Casey Condon
Deputy Clerk

Order, 752
parties copied w/ this order & minute order.

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MINUTE ORDER 1-

BEST AVAILABLE COPY

APPENDIX B

FILED

DEC 16 1999

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAREN LIM,

Petitioner-Appellee,

v.

JANET RENO, Attorney General; et al,

Respondents-Appellants.

No. 99-36191

DC# CV-99-528-Z
Washington (Seattle)

ORDER

Before: LEAVY and SILVERMAN, Circuit Judges

Respondents' emergency motion for a stay pending appeal is denied. The district court's release order is stayed until 2:00 p.m., Monday, December 20, 1999, by which time petitioner shall be released subject to appropriate conditions.

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12/16/99 THU 12:03 [TX/RX NO 6198]